

ANNUAL REPORT  
PANEL OF MEDIATORS  
Fiscal Year 2004

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (1988).

The number of new mediation requests received this fiscal year was slightly higher than that for the preceding year; there were 65 new requests compared with 64 in FY 2003 and 54 in FY 2002. During the last fifteen years, the number of new filings per year ranged from the low of 54 to a high of 115 filings in FY 1990 and 1993. The numerical average number of mediation requests received per year over the last 15 years (including this year) is 80.1 new filings per year. In addition to the new mediation requests received during the fiscal year just ended, there were 32 matters carried over from FY 2003 that required some form of mediation activity during the year. Last year, 23 matters were carried over from FY 2002. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 97, again up significantly from 86 during the previous fiscal year. Demand for the Panel's services was essentially unaffected by the introduction of user fees during FY 1992. In the uncertain economy of the early 90's, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning about the middle of calendar year 1994, parties began returning to the practice of negotiating multi-year agreements, thereby reducing the number of agreements which expired each year. The increase in demand this year reflects significant factors affecting the bargaining process--a significant shortfall in State revenue, plant closures in the private sector, the availability of fewer resources from which to fund settlements and significant increases in health insurance premiums. As predicted in last year's report, the combination of these factors has resulted in increased demand for mediation services.

Mediation is recorded as a single request, even though it may involve multiple bargaining units of a single employer. For example, one filing this year was for 7 units, another was for 3, and 3 were for 2 units each. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process a long and complicated one.

Thus, the number of mediation requests filed is not a completely accurate reflection of the Panel's actual workload.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1990	79%
1991	78%
1992	74%
1993	68.5%
1994	75.2%
1995	50%
1996	66.2%
1997	82.1%
1998	82.3%
1999	73.91%
2000	80.7%
2001	85.94%
2002	76%
2003	83.1%
2004	86.8%

The Panel's settlement rate increased somewhat this year. Anecdotal evidence from Panel members indicates that a major factor that had a negative impact on settlement rates was the continued dramatic increase in health insurance premiums. Prior to FY 2000, health insurance costs had remained relatively stable for the preceding few years due to efficiencies and economies realized through the introduction of managed care systems (HMO's, PPO's, etc.); however, premiums began rising dramatically in the last quarter of FY 2000 and have continued to increase at a double-digit annual percentage rate since then. Any discussion of wage settlements reached this year must include consideration of the amounts paid by employees toward the cost of health insurance. When employee insurance premium contributions and co-payments are considered, public employees whose contracts were negotiated this year received an average net compensation increase of approximately 1.5%.

Over the past several bargaining cycles, the most difficult issues in Maine public sector negotiations were those with fiscal impact, especially wages and health insurance financing. In addition to these issues, bargaining involving teachers in K-12 education also involved language issues, especially those concerning the nature and scope of the educational policy exception from the duty to bargain and the impact of educational policy changes on working conditions.

The Panel did not receive any request for services this year pursuant to the Agricultural Marketing and Bargaining Law, 13 M.R.S.A. §1953, et seq. (1981 and Supp. 2003); however, a member of the Panel did help resolve a dispute that had potentially catastrophic consequences for the blueberry industry. Approximately 500 growers of wild blueberries had brought suit in the Superior Court, alleging that three major processors had conspired to fix prices between 1996 and 1999. A civil jury found merit in the claim and awarded the growers damages in excess of \$18 million dollars and the possibility of additional punitive damages. In addition to appealing the verdict to the Supreme Judicial Court, the processors claimed that they did not have sufficient resources to pay the expected award and would be forced into bankruptcy. In an effort to save the industry, Commissioner of Agriculture Robert Spear requested the appointment of a member of the Panel to assist the parties in trying to resolve the controversy. Working against a deadline created by the appeals process in the Law Court, State Mediator David Bustin took the unusual step of issuing a mediator's proposed settlement and was instrumental in facilitating an agreement between the growers and two of the three processors. Approval of this agreement was pending before the Superior Court at the time this report was prepared.

In late FY 1995, members of the Panel of Mediators received instruction by the U.S. Department of Labor in interest-based bargaining techniques. Starting that year, State mediators have offered non-confrontational bargaining services to the public sector labor-management community upon the joint request of the parties. In the 58 instances where this problem-solving "preventive mediation" approach was used, 56 settlements resulted (96.6% settlement rate). Last year, for the first time since the program was introduced, we received no requests for preventive mediation services. This year we received 4 such requests. In those cases, 3 settlements have been reached and the fourth case is pending.

Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The settlement rate only includes matters where the mediator was actively involved in the settlement. Although parties who reach agreement after concluding formal mediation often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1990	115	6	106	1	2
1991	89	1	86	2	0
1992	94	3	90	1	0
1993	115	4	109	0	2
1994	114	4	109	0	1
1995	77	9	67	0	1
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0
1999	69	3	66	0	0
2000	73	6	67	0	0
2001	61	6	55	0	0
2002	54	3	50	0	1
2003	64	8	55	0	1
2004	65	2	63	0	0

The 65 requests for services received this year involved the following employee organizations:

Maine Education Association/NEA <sup>1</sup>	34 requests
Teamsters Union Local 340	8
International Association of Firefighters	5
AFSCME Council 93	5
Maine Association of Police <sup>2</sup>	3
Maine State Employees Association	3
American Federation of Teachers	1
Bridgton Federation of Public Employees	1
Granite City Employees Association	1
International Association of Machinists & Aerospace Workers	1
Portland Police Benevolent Association	1
Portland Public Employees Coalition <sup>3</sup>	1
Portland Superior Officers Benevolent Association	1

For the second consecutive year, the number of requests involving the Maine Education Association decreased, from 37 to 34 requests (an 8.1% decrease), while the total number of mediation requests increased 1.5%. The overall increase in mediation activity is primarily due to negotiations in the municipal sector. In recent years, school sector negotiations were increasingly concerned with language issues--particularly whether existing or proposed agreement provisions are matters of educational policy. Many of those disputes may have been resolved. Non-school negotiations continue to focus primarily on economic issues and such issues have proven to be much more difficult to resolve this year, with or without the involvement of mediation.

The average number of mediation-days per case increased significantly from 3.46 in FY 2003 to 4.16 for the combined total of 68 matters, including carryovers, for which

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<sup>1</sup>While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

<sup>2</sup>While reference is made to the Maine Association of Police for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MAP.

<sup>3</sup>The Coalition negotiates for 7 City of Portland units and is made up of the following employee organizations: AFSCME Council 93 (3 units); International Association of Fire Fighters (1 unit); Police Benevolent Association (1 unit); Police Superior Officers Benevolent Association (1 unit); and Professional and Technical Employees Association (1 unit).

mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 15 (2 separate cases). Of the 68 cases in which mediation was concluded this year, 54.4% were resolved in 3 days or less (12 cases were resolved in one day, 16 were resolved in two days and 9 were resolved in three days). The mediation-days per case for all mediations completed this year was 4.16 days, with traditional mediations averaging 4.22 days per case and preventive mediations averaging 5 days per case. Although requiring more time to complete, the great majority of parties in preventive mediation report greater satisfaction with the process and believe that they have created a better relationship with the other party.

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1990	2.52
1991	2.67
1992	2.75
1993	2.40
1994	2.51
1995	3.33
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84 (2.27)
1999	3.46 (3.47)
2000	4.19 (4.02)
2001	3.89 (3.60)
2002	3.86 (3.60)
2003	3.46 (3.14)
2004	4.16 (4.22)

In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within parentheses in the above table for the last 9 years (years during which preventive mediation services were provided). Although such services were also pro-

vided in 1995, only 2 preventive cases were concluded that year and we were unable to break out separate meaningful statistics for traditional and preventive cases for that year.

Of the mediations, including carryovers, that were concluded in FY 2004, 8.8% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated in the following chart:<sup>4</sup>

Fiscal Year	Percentage of Cases Proceeding to Fact Finding
1990	20.73%
1991	28.81%
1992	23.8%
1993	23%
1994	23.6%
1995	25.8%
1996	30.99%
1997	15.94%
1998	14.71%
1999	30.43%
2000	14.04%
2001	9.375%
2002	20%
2003	13.8% (38.5%)
2004	8.8% (19.11%)

Assuming the average of 4.16 mediation-days per case, the 22 matters still pending will consume an additional 92 mediation-days, for a total expenditure of approximately 375 mediation-days devoted to matters docketed in or carried over to FY 2004.

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<sup>4</sup>In past years, all post-mediation fact-finding requests were included, whether later dismissed, withdrawn or settled prior to hearing. This was somewhat inaccurate because the mediator continues to work with the parties after the fact-finding request is filed and, in many instances, settlement is achieved in mediation before the fact-finding proceeding is held. We have included the former calculation in parentheses in the chart for comparison purposes with prior years.

Despite their good faith, parties can, and often do, disagree over the meaning and intent of collective bargaining agreement provisions they have negotiated. The resulting disputes are resolved through the contractual grievance procedure, which usually culminates in final, binding arbitration. In 2001, the Legislature amended 26 M.R.S.A. § 965(2)(F) to permit members of the Panel to assist parties in resolving grievance disputes, if the parties had so agreed. The first request for grievance mediation services was received this year. Parties are invariably more satisfied with results they have negotiated than with those imposed by a third party. The use of grievance mediation is a positive development in public sector collective bargaining.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
Osip Bukharin	Gorham
David Bustin	Hallowell
James Carignan	Harpswell
Jack Hunt	Kennebunk
James Mackie	South Portland
Sheila Mayberry	Cape Elizabeth
Charles A. Morrison	Auburn
Richard Taylor	Scarborough
Don Ziegenbein	Bangor

The executive director presented testimony neither in favor of nor in opposition to a bill considered in the First Regular Session of the 121<sup>st</sup> Legislature that would have had an impact on the Panel--An Act to Enact the Uniform Mediation Act, L.D. 1295. In testimony before the Joint Standing Committee on Judiciary, the executive director outlined the types of mediation exempted from the scope of the bill and noted how the bill would impact the process for resolving prohibited practice complaints. On December 4, 2003, the Committee voted unanimously "ought not to pass," thereby killing the bill.

The mediation process continues to be the cornerstone of the dispute resolution process in Maine. Practitioners in the public sector labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in continued demand for the Panel's services in the future.



Dated at Augusta, Maine, this 1st day of July, 2004.

Respectfully submitted,

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Executive Director  
Panel of Mediators and  
Maine Labor Relations Board